

**United States Department of Labor
Employees' Compensation Appeals Board**

J.Z., Appellant

and

**FEDERAL EMERGENCY MANAGEMENT
ADMINISTRATION, Oklahoma City, OK,
Employer**

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**Docket No. 07-531
Issued: May 11, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 18, 2006 appellant filed a timely appeal from a November 29, 2006 Office of Workers' Compensation Programs' hearing representative decision and a May 12, 2006 merit decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained injuries to his face, head and eyes in the performance of duty on February 2, 2006.

FACTUAL HISTORY

Appellant, a 63-year-old project manager, filed a traumatic injury claim on February 3, 2006 alleging that he injured his face, head and eyes on February 2, 2006 when a door struck him in the face. He also alleged that his prescription glasses were damaged when the door hit him in the face on February 2, 2006.

On April 7, 2006 the Office advised appellant that it required factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a report from his treating physician containing a diagnosis of his condition and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit this evidence within 30 days. Appellant did not respond.

By decision dated May 12, 2006, the Office denied the claim finding that appellant failed to submit evidence in support of his claim. The Office determined that appellant failed to submit medical evidence providing a diagnosis resulting from the February 2, 2006 work incident.

On May 25, 2006 appellant requested an oral hearing which was held on September 13, 2006. He testified at the hearing that after his accident he received treatment for his injuries at a medical clinic. Appellant stated that he paid \$75.00 for this treatment. He also related that he underwent an eye examination for a new eyeglass prescription and bought new glasses. Appellant asserted that he was seeking reimbursement for the clinic treatment and the new eyeglasses. He did not, however, submit any factual or medical evidence in support of his claim.

By decision dated November 29, 2006, an Office hearing representative affirmed the May 12, 2006 Office decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the

¹ 5 U.S.C. §§ 8101-8193.

² *Joe Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

The Act in pertinent part at section 8101(5) defines injury as follows: injury includes, in addition to injury by accident, a disease proximately caused by the employment, and damage to or destruction of medical braces, artificial limbs and other prosthetic devices which shall be replaced or repaired, and such time lost while such device or appliance is being replaced or repaired; except that eyeglasses and hearing aids would not be replaced, repaired or otherwise compensated for, unless the damages or destruction is incident to a personal injury requiring medical services.

ANALYSIS

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established only by medical evidence.⁶ Appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on February 2, 2006 caused any personal injury.

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a diagnosis of his condition or a medical opinion to sufficiently describe or explain the medical process through which the February 2, 2006 work accident would have caused the claimed injury. Accordingly, as he has failed to submit any probative medical evidence establishing that he sustained an injury in the performance of duty, the Office properly denied appellant's claim for compensation.

While appellant alleges that the incident in question necessitated that he purchase new prescription glasses, he has not met his burden of proof in this regard. The Act states that eyeglasses will not be replaced, repaired or otherwise compensated for, unless the damage or destruction is incidental to a personal injury requiring medical services. Appellant has not established that he sustained an injury as a result of the accepted incident and he has not established that new prescription glasses were prescribed by a qualified physician.⁷

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof in establishing that his claimed face, head and eye injuries were sustained in the performance of duty.

⁵ *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee). For a definition of the term "occupational disease or illness," see 20 C.F.R. § 10.5(g).

⁶ *John J. Carlone, supra* note 4.

⁷ See *Mary Patricia Birdsall*, 9 ECAB 166 (1966). See also *Isadore J. Berman*, 16 ECAB 217 (1964).

ORDER

IT IS HEREBY ORDERED THAT the November 29 and May 12, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: May 11, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board